

1 The Honorable James L. Robart
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7
8 UNITED STATES DISTRICT COURT
9 FOR THE WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 12 MICROSOFT CORPORATION, a Washington
13 corporation,

14 Plaintiff,

15 v.

16 17 MOTOROLA, INC., MOTOROLA
18 MOBILITY, INC., and GENERAL
19 INSTRUMENT CORPORATION,

20 Defendants.

21 CASE NO. C10-1823-JLR

22 THIRD DECLARATION OF NORMAN
23 H. BEAMER IN SUPPORT OF
24 DEFENDANTS' RENEWED MOTION
25 TO DISMISS

26 NOTED ON MOTION CALENDAR
Friday, April 1, 2011

16 I, NORMAN H. BEAMER, hereby declare as follows:

17 1. I am one of the attorneys for Defendants Motorola Solutions, Inc. (formerly
18 Motorola, Inc.), Motorola Mobility, Inc., and General Instrument Corporation in this lawsuit. I
19 make this declaration based on my own personal knowledge.

20 2. I submit this declaration in support of Defendants' Renewed Motion to Dismiss.

21 3. Attached hereto as Exhibit 1 is a true and correct copy of an October 21, 2010 letter
22 sent by Kirk W. Dailey, Motorola's Corporate Vice President of Intellectual Property, to Horatio
23 E. Gutierrez, Microsoft Corporation's ("Microsoft") Corporate Vice President of Intellectual
24 Property. Attached to the letter is a list of "Motorola Essential Properties, WLAN Annex." The
25 Annex lists 52 United States and 205 foreign patents and patent applications.

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THIRD DECLARATION OF NORMAN H. BEAMER IN
SUPPORT OF DEFENDANTS' RENEWED MOTION TO
DISMISS - 1
CASE NO. C10-1823-JLR

SUMMIT LAW GROUP PLLC
315 FIFTH AVENUE SOUTH, SUITE 1000
SEATTLE, WASHINGTON 98104-2482
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Fax: (206) 676-7001

1 4. Attached hereto as Exhibit 2 is a true and correct copy of an October 29, 2010 letter
2 sent by Kirk W. Dailey, Motorola's Corporate Vice President of Intellectual Property, to Horatio
3 E. Gutierrez, Microsoft's Corporate Vice President and Deputy General Counsel. Attached to the
4 letter is a list of "Motorola Essential Properties, ITU-T-H.264." The attachment lists 26 United
5 States and 151 foreign patents and patent applications.
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7 5. Attached hereto as Exhibit 3 is a true and correct copy of Pat Treacy & Sophie
8 Lawrance, *FRANDly Fire: Are Industry Standards Doing More Harm Than Good?*, 3 J. Intell.
9 Prop. L. & Prac. 22 (2007).

10 6. Attached hereto as Exhibit 4 is a true and correct copy of Alan Devlin, *Standard-
11 Setting and the Failure of Price Competition*, 65 N.Y.U. Ann. Surv. Am. L. 217 (2009).

12 7. Attached hereto as Exhibit 5 is a true and correct copy of the IEEE-SA Standards
13 Board Bylaws, approved by the IEEE-SA Board of Governors in December 2009.
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15 8. Attached hereto as Exhibit 6 is a true and correct copy of the Guidelines for
16 Implementation of the Common Patent Policy for ITU-T/ITU-R/ISO/IEC, dated March 1, 2007.

17 9. Attached hereto as Exhibit 7 is a true and correct copy of the product information
18 website for Microsoft Corporation's Xbox 360 4GB Console (the "Console"), including the
19 "Overview" and "What You Get" portions of the website describing the product. The page is
20 publicly available at <http://www.xbox.com/en-US/Xbox360/Consoles/Systems/Xbox3604gb> (last
21 visited Jan. 6, 2011). This product information website lists the Console's retail price at \$199.99,
22 and states that the Console includes "[b]uilt in Wi-Fi" technology that is "[c]ompatible with b/g/n
23 networks."
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10. Attached hereto as Exhibit 8 is a true and correct copy of the product information website for Microsoft Corporation's Xbox 360 Wireless N Networking Adapter (the "Adapter"). The page is publicly available at <http://www.xbox.com/en-US/Xbox360/Accessories/CablesNetworking/Xbox360WirelessNNetworkingAdapter> (last visited Jan. 6, 2011). This product information website lists the Adapter's retail price at \$99.99, and states that the Adapter incorporates the "Highest Wireless N technology standard" and "[w]orks great with existing 802.11g and 802.11b wireless routers and access points."

11. Attached hereto as Exhibit 9 is a true and correct copy of excerpted pages from American Bar Association, Section of Science & Technology Law, Committee on Technical Standardization, *Standards Development Patent Policy Manual* (2007).

12. Attached hereto as Exhibit 10 is a true and correct copy of a document titled "Complaint," which was filed with the United States District Court for the Northern District of Texas on February 16, 2008, as Document 1, in Civil Action No. 08-cv-00284K, styled *Research in Motion Ltd. v. Motorola, Inc.*

13. Attached hereto as Exhibit 11 is a true and correct copy of a document titled "Declaration of Brian Blasius," which was filed with the U.S. District Court for the Northern District of Texas on April 10, 2008, as Document 33-3, in Civil Action No. 08-cv-00284K, styled *Research in Motion Ltd. v. Motorola, Inc.*

I declare under penalty of the laws of perjury that the foregoing is true and correct.
Executed this 9th day of March, 2011, at East Palo Alto, California.

Norman H. Beamer
Norman H. Beamer

Norman H. Beamer

THIRD DECLARATION OF NORMAN H. BEAMER IN
SUPPORT OF DEFENDANTS' RENEWED MOTION TO
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CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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DATED this 9th day of March, 2011.

 Marcia A. Ripley

THIRD DECLARATION OF NORMAN H. BEAMER IN
SUPPORT OF DEFENDANTS' RENEWED MOTION TO
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